IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 883 OF 2000

The Needs of Life Co.op
Bank Ltd.,
Bombay Mutual Chambers, 6th
Floor, Fort, Mumbai 400 023. ...Applicant.

V/s

1. Madan Tarachand Samant,
Age 52, Occupation : Business,
45, Goldfield Plaza,
Sassoon Road, Opp. Wadia College,
Pune 411 001.

2. State of Maharashtra ...Respondents.

Mr. M.S. Mohite for the applicant.

Ms. S.D. Shinde, APP for the State.

CORAM: V.M. KANADE, J.

DATE: 3rd February, 2006

ORAL JUDGMENT:

1. Heard the learned Counsel appearing on behalf of the applicant. None appears on behalf of the respondent No.1.

2. On the last occasion, the applicant was directed to give advocate's notice to the respondent No.1, stating that if the respondent No.1 or his advocate does not remain present on the next date, the matter will be decided in their absence.

3. The applicant is a Co-operative Bank which is registered under the provisions of the Maharashtra Co-operative Societies Act and which is also under the control, supervision and regulations of the Reserve Bank of India. The Bank was established in the year 1962. The applicant - bank had given loan of more than Rs 60 lakhs to respondent No.1 and the respondent No.1 was unable to repay the said loan. The Bank, therefore, had no other option but to file a dispute in the Co-operative Court for recovery of the said amount. Accordingly, the dispute was filed in which decree was passed by the Co-operative Court in respect of the core dispute which was filed by the present applicant. The respondent No.1, in fact, had admitted the claim and promised to pay the said amount with further interest and the Consent Terms to that effect were filed in the Co-operative Court. However, in spite of the Consent Terms being filed and in spite of the undertaking which was given by respondent No.1, he did not abide by the said undertaking and only paid an amount of Rs 5 lakhs, though, as per the Consent Terms, an amount of Rs 1.15 crores was agreed to be paid by the respondent No.1. The applicant, therefore, in view of the default made by the respondent No.1 in payment of the due as per the

Consent Terms, issued a public notice which was published in the news paper dated 20/11/1999 and 21/12/1999.

4. The respondent No.1 filed a private complaint in the Court of the Judicial Magistrate, First Class, 3rd Court, Pune for an offence punishable under section 500, 501 read with section 34 of the Indian Penal Code in which it was alleged that by publishing the said notice the respondent No.1 was defamed and, therefore, the applicant - bank and its officers were liable to be punished for an offence punishable under section 499 of the Indian Penal Code. The learned J.M.F.C., 3rd Court, Pune issued process on the said complaint and against the said order, the present application has been filed.

5. I have perused the complaint and the averments which are made in the said complaint. It is alleged in the complaint that the applicant and its officers have committed an offence punishable under sections 405, 406, 409, 425, 426, 499, 501 read with sections 500 and 34 of the Indian Penal Code.

6. The learned Counsel appearing on behalf of the applicant - Bank submitted that even if the averments

made in the complaint are taken on its face value whether any offence could be said to have been made out against the applicant which is a Co-operative Bank and which has been defrauded to the tune of Rs 1.15 crores.

7. In my view, the submissions made by the learned Counsel appearing on behalf of the applicants will have to be accepted. In my view, the learned Magistrate had clearly erred in issuing the process as the averments which are made in the letter cannot, by an stretch of imagination, be held to be defamatory as they are statements of facts which are not even denied by the respondent No.1. In this view of the matter, the process issued by the Magistrate will have to be quashed and set aside.

8. It has been held by the Supreme Court and this Court that if the averments which are made in the complaint even if they are taken on its face value do not constitute any offence, this Court while exercising its jurisdiction under section 482 of the Criminal Procedure Code can quash the process which has been issued. In the present case, it can be seen that there is a naked abuse of process of law inasmuch as the respondent No.1, instead of complying

with the undertaking which was given by him to the Co-operative Court and repaying the instalments which were agreed to be paid between the parties as per the Consent Terms, chose to file a private complaint for the public notice which was issued by the Officers of the applicant - bank.

9. In my view, therefore, this is a fit case for quashing the process. In the result, Criminal Application is allowed. The order of issuance of process dated 14/3/2000 in CC No.420 of 2000 is quashed and set aside. Rule is made absolute in the above terms.

10. Criminal Application is accordingly disposed of.

V.M. KANADE, J.